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## Letter Ruling 85-27: Lease and Installment Sale, Distinguished

February 11, 1985

\_\_\_\_\_ ("Firm") entered into a lease purchasing plan with \_\_\_\_\_ ("Company") for the "lease" of office equipment and fixtures. Under the plan the Company purchases items from retailers at the Firm's request. The Company then "leases" the equipment to the Firm and charges for the cost of the equipment plus interest. Rent is paid monthly for the term of the lease, but the Company's interest charges are not separately stated in the lease. The Firm (lessee) has the option to purchase the equipment for a nominal sum at the end of the lease term, and the Firm is the agreed-upon beneficiary of the investment tax credit for the equipment. You inquire whether the sales price on which the sales tax is based includes the Company's interest charge.

Massachusetts General Laws, Chapter 64H, Section 2 imposes a five percent sales tax on the retail sale of tangible personal property. For purposes of the sales tax, Chapter 64H, Section 12(a) defines "sale" and "selling" as "any transfer of title or possession or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration ...". The sales price upon which the tax is based is "the total amount paid by a purchaser to a vendor as consideration for a retail sale," and includes "the cost of materials used, labor or service cost, interest charges ... [and] any amount for which credit is given to the purchaser by the vendor." (G.L. c. 64H, § 14(a) and (b)). The interest charges referred to in Section 14(a) are the vendor's interest costs occasioned by the vendor's purchase of the property and passed on to the purchaser at the time of sale. Conversely, separately stated interest or finance charges that are incurred and paid after the sale may be deducted from the sales price subject to tax. See Letter Ruling 83-18. No deduction may be made for amounts not separately stated that may represent interest or other finance charges incurring after the sale.

In a true leasing arrangement, the lessor must collect the tax from the purchaser on each rental payment as it becomes due. In the case of installment sales, however, a tax based on the total sales price, as determined by the above definition, is due at the time of sale.

Under the provisions of Subsection (2) of Sales and Use Tax Regulation 830 CMR 64H.06, whether a transaction is a lease or installment sale depends upon all the facts and circumstances in each case, including the good faith of the taxpayer. The taxpayer's characterization of the transaction is not determinative of its substance. However, a transaction is more likely to be regarded as an installment sale rather than a lease if, at the end of the term of the agreement under which property is transferred the transferee has the option to purchase the property for a nominal sum.

The price of the Firm's purchase option is nominal. This fact, together with the Firm's agreed-upon tax benefit and other provisions of the plan, causes the lease to be considered an installment sale, facilitating the full payment of sales tax at the time of sale. Because the plan does not separately state the amount representing interest, the total price the Company charges, including interest, is subject to the sales tax.

Therefore, the lease purchasing plan will be considered an installment sale and the full payment of the tax should be made at the time of sale. The sales price subject to tax should include the

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Company's interest charge.

Very truly yours,

/s/Ira A. Jackson

Ira A. Jackson

Commissioner of Revenue

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